DIARY FOR SEPTEMBER.

4. Sat... County Court of York Term ends.
5. SUN. *15th Sunday after Trinity.*
12. SUN. *16th Sunday after Trinity.*
19. SUN. *17th Sunday after Trinity.*
26. SUN *18th Sunday after Trinity.*
29. Wed. *St. Michael*

The Local Courts' AND MUNICIPAL GAZETTE.

SEPTEMBER, 1869.

A FEW WORDS ON ARBITRATION.

There are two points touching arbitration, one general and the other particular, to which we desire to direct attention. The first is the suggestion of a remedy for the usually interminable length of arbitration proceedings. A case is referred at Nisi Prius or by a judge in Chambers, to some one or three gentlemen of the bar, and from that time forth it is uphill work to get it brought to a conclusion. The convenience of all parties—referee, plaintiff and defendant, plaintiff's and defendant's legal advisers, plaintiff's and defendant's witnesses—has to be consulted, and frequent enlargements result in this endeavour. Then every other piece of business is made to take priority over this: and so the reference drags its slow length along, at an expenditure of time and money, that is anything but soothing to the losing party. Mr. Justice Gwynne, in one of his charges at the Toronto Assizes, referred to the advisability of having official referees, to whom might be referred the assessment of damages in certain cases. So we say (and the matter has also been occupying attention in England). Let there be three or more official arbitrators or referees appointed from gentlemen at the bar, who need not on that account give up their practice, but who shall, when a cause is referred to them, act *pro hac vice* as officers of the court and subject to the rules of the court. These referees can then be made subject to the court's directions for the prosecution of business *de die in diem*, till the reference is disposed of. It may be, however, that the end of expedition and correctness in the despatch of arbitration cases, might be better attained by the appointment of an additional officer for each court, whose business it should be to determine these cases and other references, in the same manner as a master in Chancery.

The other point is with regard to the complex arbitration clauses in the Common School Acts, which have frequently been adverted to by the judges in no very complimentary terms. We have several clauses in the Consolidated Act, which it would require a very skilful lawyer to manipulate, and which almost certainly bring to grief every Local Superintendent and School Trustee, who meddles therewith. The series of cases wherein Kennedy figures as plaintiff, is a standing proof of the folly of these provisions. See *Kennedy* v. *Burness et al* 15 U. C. Q. B., 473; *Kennedy* v. *Hall et al*, 7 U. C. C. P., 218; *Kennedy* v. *Burness et al.* and *Murray* v. *Burness et al.* 7 U. C. C. P. 227.

And again we have a further accumulation of clauses in the Act of 1860 (23 Vic. cap. 49) which have been lately exposed in the courts. Section 9 of that Act is a curious product of legislative skill, and is thus commented on by the Chief Justice of the Common Pleas, in a recent decision: (*Birmingham* v. *Hungerford*, 19 U. C. C. P. 414):—"It is right, however, to notice the wording of section 9 of the Act of 1860, on which defendants claim to have proceeded: 'If the trustees wilfully refuse or neglect, *for one month after publication of award*, to comply with or give effect to an award of arbitrators appointed, as provided by the 84th section of the said U. C. C. S. Act, the trustees so refusing or neglecting shall be held to be personally responsible for the amount of such award, which may be enforced against them individually by warrant of such arbitrators *within one month after publication of their award.*' It would seem to be simply impossible to carry this section into effect. If they refuse for one month after publication they are to be liable, and the award may be enforced against them by warrant *within* one month after publication."

The Chief Justice then proceeds to point out what undoubtedly is the true remedy for this cumbrous mode of procedure:—"This is another of one of those most unfortunate cases which have come before the courts in consequence of errors naturally committed in the exercise of statutable powers to decide claims and issue executions otherwise than by regular legal process. A most arduous and dangerous duty is imposed on arbitrators, by directing them to issue their warrant for the seizure